

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARK AYOTTE, KEN MAUER, and JASON  
PHILLIPS,

Plaintiffs,

- against -

THE NATIONAL BASKETBALL  
ASSOCIATION and NBA SERVICES CORP.,

Defendants.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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DATE FILED: 11/27/2023

22-CV-9666 (VSB) (RWL)

ORDER

**ROBERT W. LEHRBURGER, United States Magistrate Judge.**

This order resolves Defendant's letter motion at Dkt. 90 for a protective order prohibiting Plaintiff from deposing retired General Martin E. Dempsey, a non-party. Defendant has shown that discovery to date has not revealed any connection between General Dempsey and the NBA's Covid-19 policies. General Dempsey's name does not appear on any relevant documents, and he did not participate in any meetings or discussions about the NBA's Covid-19 policies. (See Dkt. 90 at 2.) The deposition of Plaintiffs' executives similarly did not reveal any such involvement by General Dempsey. (Id.) Plaintiffs' response does not present any evidence to the contrary and offers only speculation, emphasizing the fact that General Dempsey has multiple advisory roles with the NBA and that pandemic response requires military style planning and execution. That said, Plaintiffs' state action allegations remain in the case as of now, and General Dempsey is a focal point of those allegations. Defendant has not described any particular reason that a deposition, taken remotely, would be a burden apart from general annoyance and time that goes along with being a deponent. Further, any burden and

annoyance will be reduced by limiting the time for the deposition. Accordingly, the deposition of General Dempsey shall go forward by remote means and shall be limited to three hours.

The Clerk of Court is respectfully directed to terminate the motion at Dkt. 90.

SO ORDERED.



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ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

Dated: November 27, 2023  
New York, New York

Copies transmitted this date to all counsel of record.